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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,408	06/28/1999	ANDREAS FELLINGER	FLA-0010	6097

7590 12/29/2003

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 12/29/2003

43 51

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/308,408	FELLINGER, ANDREAS
	Examiner Shian T. Luong	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 33-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 33-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \*    c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>50</u> . | 6) <input type="checkbox"/> Other: _____                                     |

***Claim Rejections - 35 USC § 112***

1. Claims 35-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 35, the two flexible layers on line 5 appear to be of the same flexible base and covering film already introduced on line 2. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33, 35, 37 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Roulin et al in view of Moore et al (US 3,913,562). Roulin et al disclose two flexible film materials that are sealed at reference element 11 as shown in Figures 1A-1C to form a plurality of compartments. The cover sheet is torn by finger pressure. Roulin et al disclosed on column 1, lines 24-30 that "Push-through packs are e.g., such that the lid material is of aluminum foil or an aluminum foil laminate. Aluminum foil is a preferred material for the lids on a blister package, as the thickness of the material employed requires relatively little force for it to rupture. Although Roulin does not disclose sterilization paper as an alternate source for the cover, Moore et al. teaches the combination of a sterilization paper with a plastic sheet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the

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cover out of sterilization paper and the base out of polyamide or polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

4. Claims 34,36 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 33,35, further in view of Gregory et al. or Troll et al. Roulin et al disclose all of the elements, but lacks the convex shaped compartment as recited in claim 34. However, Troll et al suggest providing, for example only, a convex shaped compartment with a lid sheet thereover. Gregory et al also teach a compartmented package with convex shaped base layer. Hence, it would have been obvious in view of Troll et al or Gregory et al to provide a convex shaped compartment for the base sheet of Roulin et al to conform to the shape of the intended article.

5. Claims 33, 35, 37 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Gas-X in view of Moore et al. Gas-X is a drug sold by Novartis since the 1980s for treating pressure and bloating. The package that contains Gas-X is generally a blister package made out of flexible plastic layer and a flexible foil layer. A plurality of compartment is formed on the plastic layer to receive the drug in pill or softgel form. When the package is bend in an arc shape or circular shape, it remains in that position. Gas-X does not disclose sterilization paper as an alternate source for the cover, Moore et al. teaches the combination of a sterilization paper with a plastic sheet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cover out of sterilization paper and the base out of polyamide or polyethylene, since it has been held to be within the general skill of a worker in the art to select a

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known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 34,36 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 33,35, further in view of Gregory et al. or Troll et al. Gas-X discloses all of the elements, but lacks the convex shaped compartment as recited in claim 34. However, Troll et al suggest providing, for example only, a convex shaped compartment with a lid sheet thereover. Gregory et al also teach a compartmented package with convex shaped base layer. Hence, it would have been obvious in view of Troll et al or Gregory et al to provide a convex shaped compartment for the base sheet of Gas-X to conform to the shape of the intended article.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 33-37 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. **The Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648.**

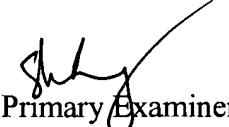
If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

For applicant's convenience, the official FAX number is (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

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Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL  
December 22, 2003



Primary Examiner  
Shian Luong  
Art Unit 3728